



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/981,565

10/17/2001

Andrew C. Gilbert

01-1040

7706

63710

7590

03/17/2010

INNOVATION DIVISION
CANTOR FITZGERALD, L.P.
110 EAST 59TH STREET (6TH FLOOR)
NEW YORK, NY 10022

EXAMINER

TRAN, HAI

ART UNIT

PAPER NUMBER

3694

MAIL DATE

DELIVERY MODE

03/17/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/981,565	Applicant(s) GILBERT ET AL.	
	Examiner HAI TRAN	Art Unit 3694	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant Initiated Interview

1. In view of Applicant's interview with the SPE on December 15, 2009, prosecution for this application is re-opened.
2. This is the Non-Final Office Action in response to the Interview Summary filed on January 14, 2010 by the Applicant for application, titled: "Systems and Methods for Bid/Offer Spread Trading".
3. Claims 28-46 remain pending in this application and have been examined.

Priority

4. This application claims the benefit of U.S. Provisional Patent Application No. 60/280,668, filed March 30, 2001.

Response to Arguments

5. Applicant's arguments with respect to claims 28-46 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 28, 32-34, and 38-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Wiseman (U.S. Patent No. 5,168,446) ("Wiseman").

8. **With respect to Claim 28**, Wiseman teaches a method comprising the steps of:

at a computer system, receiving a first order from a first party, in which the first order indicates a first spread with which to make a market for a financial instrument and a second spread at which to make a market for the financial instrument, and in which the first order includes an acceptance by the first party to participate in the market at the first spread and an acceptance by the first party to make a market at the second spread if the second party accepts the command (see Wiseman, col. 3, lines 10-9 of col. 4, Figure 5/elements 160-167 and description);

at the computer system, receiving a second command from the second party, in which the second command comprise at least one of an acceptance of the first spread and an acceptance of the second spread (see Wiseman, col. 4, lines , 11-20 "the counter party must accept the proposal", Figure 5/element 171-172 and description);

if the second command comprises the acceptance of the first spread, requiring the first party to submit a third command indicating at least one of a buy and a sell of the financial instrument at a price reflecting the first spread (see Wiseman, col. 4, lines 21-30, Figure 5/element 174-178 and description), and

if the second command comprises the acceptance of the second spread, requiring the second party to submit a third command indicating at least one of a buy and a sell of the financial instrument at a price reflecting the second spread (see Wiseman, col. 4, lines 21-30, Figure 5/element 174-178 and description).

9. **With respect to Claim 32**, Wiseman teaches the method of claim 28, in which the first spread and the second spread are the same (see Wiseman, col. 3, lines 37-55, Figure 5/elements 163, 167, col. 26, lines 33-45 “the counterparty can also transmits a quote message with no change from previously transmitted one to trader”, Figure 12 and description).

10. **With respect to Claims 33 and 38**, Wiseman teaches that the method of claim 28, in which the second command comprises the acceptance of the first spread and the method further comprises:

requiring the second party to submit a fourth command indicating that the first market for the financial instrument should be made with the first spread (see Wiseman, col. 28, lines 59-42 of col. 29 “the counterparty must transmit an acceptance of it in some form, unless it is changed”).

11. **With respect to Claims 34 and 39**, Wiseman teaches that the method of claim 33, in which the fourth command includes an indication of a price around which the first market should be made (see Wiseman, col. 28, lines 59-42 of col. 29).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3694

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 29-31, 35-37, and 40-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiseman in view of Lutnick et al. (U.S. Patent No. 6,850,907) (“Lutnick”).

14. **With respect to Claims 29-31 and 35-37**, these claims recite the feature such as blocking the first party from participating in a market, charging a fee to the first party, and entering a default trading command from the first party if the third command indicating at least one of a buy and a sell of the financial instrument through the first market is not received within a limited period of time.

15. These claims focused on ensuring the first party to follow through the trading rule/process, and if not, a fee will be charged. Wiseman does not explicitly address that if a trader does not follow thru the trading process. A person of ordinary skill in the art would understand this to mean that if their offer is accepted during this time, they must honor it. Wiseman teaches a cancel command during a period of time in col. 19, lines 35-52. In this case, the period of time is from the beginning of the proposal state until the proposal is changed.

16. Lutnick teaches a data processing system for implementing auction-based including the block (see col. 11, col. 14, lines 36-46, Figure 7/element 830), fee charging (see col. line 66-7 of col. 12 “there is a business purpose for this arrangement”), and default trading command features (see col. 11, lines 55-7 of col. 12). It would have been obvious to one of ordinary skill in the art at the time of the

invention to modify Wiseman's invention o include the block, fee charge, and default trading command features to offer a system that can deal in cases that a trader cannot follow thru the trading rule.

17. **With respect to Claims 40-46**, these claims include the necessary computer programs for implementing the method claims 28-39 and have the same elements and limitations. Hence, they are rejected under the same rationale provided in claims 28-39.

Conclusion

18. Claims 28-46 are rejected.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAI TRAN whose telephone number is (571)272-7364. The examiner can normally be reached on M-F, 9-4 PM.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

Art Unit: 3694

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ella Colbert/
Primary Examiner, Art Unit 3694

/H. T./
Examiner, Art Unit 3694